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To:
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Attention: Docket No. 2000-56

**"Repurchases of Stock by Recently Converted Savings Associations, Mutual Holding Company Dividend Waivers,
Gramm-Leach-Bliley Act Changes"**

Dear Sirs:

These dividend waiver and stock buyback changes were long in coming, but I applaud the efforts made to push them forward here. This should not come with the tradeoff of specialized business plan procedures for the future, however.

Reviewing and commenting on this document by section:

A. Stock Repurchases:

To use the wording that this should be a management's "business decision" is excellent [line 1, page 4]. As long as the regulators insure safety and soundness criteria, and fairness under CRA, there should not be any additional regulatory hurdles involved. I am even uncomfortable with the words "such as business plan review and approval" in line 2 and 3, top of page 4. This can lead to other non-business agenda hurdles being proposed, required, or created, and I think such words should be left out.

For those possible purchases before the end of the first year following conversion, the OTS agrees to consider proposals [final paragraph, page 4]. This will include how not making such a purchase "may detrimentally affect an institution's financial condition". This is too unclear a concept to me, and I would suggest adding "**or its efficient capital deployment choices**". Here the words "business purpose for the repurchase" are used, and I would suggest instead "business **management** purposes" to shift the implication that the OTS winds up in the "definition of business purpose" business rather than the "safety and soundness management" business.

Finally, the circumstance of an MHC doing a full conversion is not specifically addressed. Such "second step" transactions have often been at higher appraisal rates and raised considerable excess capital for the institution where subsequent market developments have precluded its efficient or prudent deployment. I would argue that many of the reasons for first year restrictions to limit buyback are not present in these second step cases, and perhaps beyond some period like 30 or 60 days, they should be considered as institutions that have been public over one year, and any buyback should be a 100% business decision of management. This might also allow some additional business flexibility in management's handling of the

"exchange ratio quandary". Currently, management has an obligation to existing minority shareholders [including ESOP] to sell as much stock as possible to maximize the exchange ratio. This creates a future capital deployment problem which I do not think should be subject to your "special first year rules".

B. Dividend Waivers for Mutual Holding Companies

The dividend waiver I look upon as a logical and necessary enhancement for MHC stockholders, and a necessary concept that was part of the original MHC idea back in the 1980's. Otherwise an MHC's minority shares can be a non-voting, income participating, depreciating preferred stock that can be an unattractive investment long-term. I say "depreciating" because over time the retained earnings attributable to investors' capital and the dividend waivers charged back can selectively accrue preferentially to the benefit of the unsold MHC shares, rather than to the minority shares. Since undistributed earnings accrue pro-rata to majority and minority shares irrespective of a significant capital contribution made by the minority stockholders, the original concept to be able to pay out a high dividend – even equal to the full amount of earnings per share – would create a security that could be viable long term. There would be some growth in all the shares' book value per share from the waived dividends, which would balance the earnings and book value reductions by using the total of sold minority and unsold majority shares for the devisor for calculating all per share figures. Additionally, although the MHC minority interest shares were never challenged for it, I think the Securities and Exchange commission should not allow supposed equity securities that cannot or might not be viable indefinitely because of odd or unclear terms that could make them lose value to another class of unsold security. Of course, neither should a company nor another regulatory agency deliberately create such a security, either. Both the unclear requirement to pay a no higher than "peer group" dividend and the additional risk of any charge back for waived dividends I see as unfairness issues of misrepresentation and insufficient disclosure for SEC challenge, as well as violations under various Blue Sky laws. Thank goodness for the new rules.

Looking at the issue another way, I think **it is a questionable agenda to have to accrue earnings, book value, and other enhancements to increase the value of the unsold shares of the MHC, for the supposed benefit of those who freely elected not to buy shares in the first offering.** To incentivise investors to own the stock, and management to apply focused diligence to make the institution more valuable, the issued stock has to get, or have the potential to get, more underlying value. While it is specified that there is a fiduciary duty to "protect the interests of the depositors" [page 6, next to last sentence], this is a nebulous concept. It is not clear that there really must be any obligation to preserve depositors' equity in an MHC institution indefinitely after they have had an opportunity to buy stock. More importantly, I think **it should be specifically spelled out that *there should be absolutely no* requirement *to grow or enhance that equity amount attributed to the unsold shares.* That would then be in the offering prospectus, would clarify a board's obligations, and would define the understanding for the regulators as well.**

Following this thought, consider another extreme: There should be no regulatory *requirement* for any mutual institution to even earn a profit, much less grow or expand. Meeting safety and soundness issues can have nothing to do with whether management elects to even work as volunteers without pay, and the institution operate as a de facto charity for its customers with zero or near zero return on equity every year.

Finally, because of its unusual terms and limitations, an MHC share is favored as an income producing security, and there should be absolutely no requirement tied to a business plan to judge dividends as "ordinary" or "excessive." This single regulatory concept would totally undermine the value of having and being able to freely use a dividend waiver, and continue to limit the fairness and potential of MHC shares as an investment.

C. The Gramm-Leach-Bliley Act

I question the view that these changes will enhance the MHC as a more suitable long-term alternative than full conversion to stock form [Second sentence, page 7]. I don't agree that it is proper for a regulator of safety and soundness to have an agenda that calls for trying to make one form of stock conversion more attractive than another. This is wrong in principal – or will prove to be so down the line.

Additionally, it is now almost 4 months since the OTS rule changes went into effect. As the MHC structure is still currently used in the marketplace, without management decisions to substantially enhance the dividend payout levels and some other possible additional changes for buybacks, etc., these rule changes alone are not enough to make the MHC as attractive in general as a full conversion. If nowhere else, the marketplace is still saying that, too.

To be fair, I definitely agree that the MHC has the potential to be an attractive choice.

D. Related Rulemaking

The detail of applicable regulation and effective dates is nicely presented.

The Paperwork Reduction Act has one area of objection. I am very uncomfortable with the assumptions made about a Business Plan, both in the current proposals herein, and in the collateral document #2000-57. The OTS hereby will require this newly defined regulatory document that will need weeks of work by the institution, their lawyers, appraisers, and perhaps underwriters before an institution's board will be allowed to vote on any plan of conversion. This document alone will be used to determine if an institution should be given the right to convert. Not only is there a big expansion in required conversion paperwork and an additional imposed time delay, but this requirement is probably onerous enough, or rigorous enough, that many institutions that would otherwise convert, are precluded from even trying. By reducing the number per year that will try, the calculation of man-hours the paperwork creates gets to appear as a very low number per institution, which I think is very misleading. The impact however is significant, and it is an improper regulatory agenda.

PART 575 – Mutual Holding Companies

The comments above in A, B, C, and D refer to the changes that would be suggested for this section.

Thanking you for your consideration of these comments, I would be glad to discuss any of them further or have any misinformation corrected. Please also reference the many related comments detailed for **Docket No. 2000-57**, and also submitted today.

Sincerely,

Ed Fraser